

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Waste Management

(New Administrative Regulation)

401 KAR 101:001. Definitions for 401 KAR Chapter 101.

RELATES TO: KRS 218A.1431, 219.011, 224.01-010, 224.01-410, 29 C.F.R. 1926.50 -  
1926.66

STATUTORY AUTHORITY: KRS 224.01-410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.01-410 requires the cabinet to promulgate administrative regulations for methamphetamine contaminated properties. This administrative regulation is necessary to define terms that are used throughout 401 KAR Chapter 101.

Section 1. Definitions. The following definitions shall be applicable to 401 KAR Chapter 101:

(1) "Absorption" means:

(a) For a person or an animal, the process of a substance getting into the body through the eyes, skin, stomach, intestines, or lungs; or

(b) The process of taking in.

(2) "Acidic" means the condition of a media that contains a sufficient amount of acid substances to lower the pH below seven and zero tenths (7.0).

(3) “Acute effect” means an immediate response to a contaminant that may consist of shortness of breath; cough; chest pain; dizziness; lack of coordination; chemical irritation; burns to the skin, eyes, mouth or nose; and in severe cases, death.

(4) “Adverse health effect” means a change in body functions or cell structure that may indicate or lead to disease or health problems.

(5) “Ambient air” means an unconfined portion of the atmosphere including open air or surrounding air.

(6) “Cabinet” is defined by KRS 224.01-010(9).

(7) “Certified contractor” means an entity or individual who completes the steps required by 401 KAR 101:010 to become recognized by the state and is authorized to conduct the decontamination services for contaminated properties following the protocols of the tiered response system.

(8) “Clandestine methamphetamine lab” is defined by KRS 224.01-410(2)(a).

(9) “Confined Space” means a space having the following characteristics:

(a) Limited means for exit and entry; and

(b) Ventilation of the space is lacking or inadequate, allowing for the potential accumulation of toxic air contaminants, flammable or explosive agents, or depletion of oxygen.

(10) “Constituent of concern” or “COC” means chemicals or compounds that include methamphetamine or related hazardous materials that may be present at inhabitable properties.

(11) “Contaminated property” is defined by KRS 224.01-410(2)(b).

(12) “Cook” means:

(a) The process of manufacturing methamphetamine or other illegal substances; or

(b) The person responsible for manufacturing methamphetamine or other illegal substances.

(13) “Decontamination standards” is defined by KRS 224.01-410(2)(c).

(14) “Encapsulation” means the act of surrounding, protecting, or sheathing a building material, by applying paint or other sealant.

(15) “Flame ionization detector” or “FID” means one of several methods for detecting and quantifying primarily hydrocarbon gases. Flame ionization utilizes a hydrogen flame to ionize and detect gases that are essentially flammable; however, the process is far less sensitive to oxygen containing compounds due to the reduced carbon atoms.

(16) “Hazardous waste” is defined by KRS 224.01-010(31)(b).

(17) “Hazardous Waste Operator (HAZWOPER) training” means a forty (40) hour course required by OSHA under the General Site Worker standard per 803 KAR 2:403 and 29 C.F.R. 1926.50 through 1926.66 for workers to enter and work within an area defined as a hazardous waste site or uncontrolled hazardous waste site.

(18) “HEPA” means High-Efficiency Particulate Air Filtration system.

(19) “Home owner” means the title holder of the inhabitable property where a notice of methamphetamine contamination has been posted.

(20) “Hotel” is defined by KRS 219.011(3).

(21) “HVAC” means heating, ventilation, and air conditioning system.

(22) “Inhabitable property” is defined by KRS 224.01-410(2)(d).

(23) “Land owner” means the deed holder of the land.

(24) “Manufacturer” is defined by KRS 218A.1431(1).

(25) “Methamphetamine” is defined by KRS 218A.1431(2).

(26) “NAZI cook” means a method of producing methamphetamine using anhydrous ammonia.

(27) “OSHA” means Occupational, Safety, and Health Administration.

(28) “Property owner” means the home owner or land owner.

(29) “Personal protective equipment” or “PPE” means equipment for the eyes, face, head, or extremities; protective clothing; respiratory devices; or protective shields or barriers, used and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation, or physical contact.

(30) “Photoionization detector” or “PID” means a device used for the detection of certain VOC’s, based on their ionization potential, which utilizes ultraviolet light to ionize gas molecules.

(31) “Precursor” means compounds or mixtures containing ephedrine or pseudoephedrine.

(32) “Red phosphorus” means ingredients that may be used in the manufacture of methamphetamines; the strike plate on a book of matches is a frequently used source of red phosphorus.

(33) “Related hazardous material or hazardous waste” is defined by KRS 224.10-410(2)(f).

(34) “Render unusable” means destruction of an item to a degree so that it can not be used for its intended purpose.

1           (35) “Semi-volatile” means substances that slowly evaporate at normal temperatures or  
2 pressures.

3           (36) “Solvent” means a liquid capable of dissolving or dispersing another substance.

4           (37) “Surface material” is defined by KRS 224.01-410(2)(e).

5           (38) “Tiered response system” means a system to address the level of clean up services  
6 required for a contaminated property based upon the degree of methamphetamine production and  
7 the degree of potential contamination resulting from methamphetamine production as indicated  
8 by the results of assessment by responding state or local law enforcement.

9           (39) “Toxic agents” means a chemical or physical agent that, under certain circumstances  
10 of exposure, may cause adverse health effects.

11          (40) “Volatile” means evaporating readily at normal temperatures and pressures.

12          (41) “Volatile compounds” or “VC” means compounds that are in most cases organic in  
13 composition and evaporate readily into the air.

401 KAR 101:001 approved for filing.

---

Date

---

Hank List, Deputy Secretary  
Signing for  
Leonard K. Peters, Secretary  
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2009 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks Lane, Frankfort, Ky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 17, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Tim Hubbard, Assistant Director  
Division of Waste Management  
200 Fair Oaks, 2<sup>nd</sup> Floor  
Frankfort, KY 40601  
Telephone: (502) 564-6716 Fax (502) 564-4049  
Email: Tim.Hubbard@ky.gov

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tim Hubbard, Assistant Director

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does:  
This administrative regulation defines terms used in 401 KAR Chapter 101.
  - (b) The necessity of this administrative regulation:  
This administrative regulation is necessary to help the reader understand the meaning of terms used in 401 KAR Chapter 101.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes:  
This administrative regulation conforms to the authorizing statute by defining terms for 401 KAR Chapter 101.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:  
This administrative regulation will assist the reader by defining terms used in 401 KAR Chapter 101.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: N/A
  - (b) The necessity of the amendment to this administrative regulation: N/A
  - (c) How the amendment conforms to the content of the authorizing statutes: N/A
  - (d) How the amendment will assist in the effective administration of the statutes: N/A
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:  
This administrative regulation will affect owners of methamphetamine contaminated properties, contractors certified to clean up methamphetamine contaminated properties (there are currently 18), Kentucky State Police, local law enforcement agencies, the Cabinet for Health and Family Services Department of Public Health, and local health departments
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:  
There will be no actions necessary to comply with this administrative regulation.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):  
It will not cost anything to comply with this administrative regulation.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3):  
Affected individuals will have a better understanding of the terms used in 401 KAR Chapter 101 by using this administrative regulation.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
  - (a) Initially: There will be no cost to implement this administrative regulation.



- (b) On a continuing basis: There will be no cost to implement this administrative regulation.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:  
There will be no cost for implementing this administrative regulation; therefore, funding will not be necessary.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:  
No funding will be necessary to implement this administrative regulation.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:  
This administrative regulation does not establish any fees.
- (9) TIERING: Is tiering applied? **(Explain why or why not)**  
Tiering is not applied. The terms defined in this administrative regulation are applicable to all of 401 KAR Chapter 101.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 101:001

Contact Person: Tim Hubbard, Assistant Director

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?  
Yes   x   No         
If yes, complete questions 2-4.
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?  
Kentucky State Police, local law enforcement agencies, Cabinet for Health and Family Services Department for Public Health, and local health departments will be impacted
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.01-410
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?  
This is a definition regulation, and thus should not generate revenue.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?  
This is a definition regulation, and thus should not generate revenue.
  - (c) How much will it cost to administer this program for the first year?  
This is a definition regulation, and thus should not generate expenditures.
  - (d) How much will it cost to administer this program for subsequent years?  
This is a definition regulation, and thus should not generate expenditures.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: